



October 4, 2010

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

*Re: Implementation of Section 224 of the Act
GN Docket No. 07-245*

Dear Ms. Dortch:

I have enclosed Reply Comments on behalf of the Virginia, Maryland & Delaware Association of Electric Cooperatives in the above matter.

Thank you for your assistance in filing this document in the appropriate manner, and please contact me if you have any questions or if you need anything further.

Sincerely,

Eric M. Page

Enclosure

cc: Mr. Richard Johnstone

E-mail: Eric.Page@leclairryan.com
Direct Phone: 804.968.2985
Direct Fax: 804.783.7682

951 East Byrd Street, Eighth Floor
Richmond, Virginia 23219
Phone: 804.783.2003 \ Fax: 804.783.2294

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

Washington DC

In the Matter of)	
)	
Implementation of Section 224 of the Act)	WC Docket No. 07-245
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51

**REPLY COMMENTS OF THE VIRGINIA, MARYLAND & DELAWARE ASSOCIATION
OF ELECTRIC COOPERATIVES**

The Virginia, Maryland & Delaware Association of Electric Cooperatives (“VMDAEC”) appreciates this opportunity to file Reply Comments in the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”) regarding, *inter alia*, access to utility poles by telecommunications and cable companies, rates charged to pole attachers and improving the pole attachment enforcement process.¹ Specifically, VMDAEC files these reply comments in support of the National Rural Electric Cooperative Association’s (“NRECA”) comments (“NRECA Comments”) filed on August 16, 2010 which were, in turn, filed in response to the NPRM issued on July 15, 2010.

1. The Virginia, Maryland & Delaware Association of Electric Cooperatives has an interest in this proceeding.

VMDAEC consists of thirteen not-for-profit electric cooperatives in Virginia,² two in

¹ *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51 (rel. May 20, 2010), 75 *Fed. Reg.* 41,338 (July 15, 2010).

² A&N Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and Southside Electric Cooperative.

Maryland,³ and one in Delaware.⁴ VMDAEC electric cooperatives serve approximately 2.05 million people in three states through 601,465 meters in Virginia, 197,371 meters in Maryland, and 83,838 meters in Delaware. Approximately 91 percent of those meters serve residential members. VMDAEC is the largest organization representing consumers in each of Virginia, Maryland and Delaware.

This NPRM is of great interest to the electric cooperatives of Virginia, Maryland and Delaware. Although 47 U.S.C. § 224 (a) (1) of the Communications Act (“Act”) exempts electric cooperatives from Commission pole attachment jurisdiction, any changes made by the Commission to its regulations can and do impact electric cooperatives in Virginia, Maryland and Delaware. VMDAEC has found over the past few years that the Commission’s regulations are viewed by utility pole attachers as the “standard” for rates and terms and conditions when electric cooperatives negotiate pole attachment agreements with attachers. In a recent proceeding involving electric cooperative pole attachments with small telecommunications carriers pursuant to Virginia Code § 56-41.1, the Virginia State Corporation Commission was presented with calculations for pole attachment rates using the rate formulas set forth in 47 U.S.C. § 224 (d) as the “upper limits” for rates to be charged by electric cooperatives to small telephone companies.⁵

³ Choptank Electric Cooperative and Southern Maryland Electric Cooperative.

⁴ Delaware Electric Cooperative.

⁵ See, Virginia State Corporation Commission Case No. PUC-2003-00087, *Commonwealth of Virginia, ex rel. NTELOS Telephone Inc., et al. v. BARC Electric Cooperative, et al.*, Testimony of Douglas Duncan Meredith, filed on October 1, 2003 (at p. 3):

The purpose of my testimony is to illustrate how the Federal Communications Commission (“FCC”) rules establishing pole attachment rates is a reasonable method of calculating pole attachment rates for utilities in Virginia. I will show the FCC’s rules were established from a comprehensive record and that the FCC’s formula for pole attachments is a reasonable and fair method by which to calculate pole attachment rates.

Ultimately, the Commission's regulations tend to set "standards" that greatly impact pole attachment negotiations between VMDAEC members and attachers, including cable operators. VMDAEC's interest in this proceeding, therefore, is immediate and compelling.

2. The Commission should balance the desire to speed broadband deployment against the need to ensure safe and reliable electric service.

VMDAEC supports NRECA's contention that "[t]he NPRM's 'Need for Speed' make-ready proposals must be balanced with the need to ensure safe and reliable delivery of electric services."⁶ The NRECA Comments effectively describe troubling installation practices used by attachers in their rush to deploy telecommunications land cable lines and equipment. These practices are not overblown or overstated, despite the suggestion made in the NPRM.

For example, a several VMDAEC members report numerous incidents of low cables, in violation of Virginia Department of Transportation ("VDOT") requirements, attached to their poles by cable and telecommunications attachers that have interfered with equipment, farm machinery or trucks. Electric cooperatives in Virginia, Maryland and Delaware report that a significant number of cable attachments do not provide the proper clearances between their attachments and electric facilities. In 2009 alone, one Virginia electric cooperative discovered and repaired, at the attacher's expense, 185 attachments that violated electric safety requirements. Although the cooperative was compensated for repairs that the attacher was in no hurry to make, the diversion of cooperative resources and the lost productivity on behalf of the owner/members was not reimbursed. One Virginia electric cooperative reports that it has discovered situations in which cable contractors installed wires across active railroad tracks at a level below the minimum clearance of twenty-eight feet, creating a situation in which the electric distribution

⁶ NRECA Comments at p. 7.

line crossing and supporting poles to which the cable had been attached could have been destroyed if a train had engaged the cable television wires. The electric cooperative only avoided disaster by diligence and conscientious supervision. Other electric cooperatives report improper ground clearances, which is particularly a problem in cultivated fields, causing numerous wires becoming caught on farm equipment. One electric cooperative in Virginia reports that approximately 25% of the cable attachments inspected are in violation of these clearance requirements, and over one half of the drop attachments violate these standards.

A number of electric cooperatives in Virginia, Maryland and Delaware report that cable attachers do not adequately maintain their attachments, including situations in which over lashing has broken and the cable has come loose from the messenger and is hanging at unsafe clearances.

These problems have caused extensive damage to electric cooperative poles and have resulted in power outages. One Virginia electric cooperative reports an incident in which a cable attachment was placed too low across a highway (also violating VDOT requirements), causing a mobile home operator traveling on the highway to strike the line and shatter the cable attachment, which fell onto the road, breaking the windshield of an automobile following a mobile home. The electric cooperative ultimately discovered that the cause of the incident was a failed guy and anchor on the cable attachment.

Another widespread problem encountered by VMDAEC members is the lack of information provided to electric cooperatives by cable operators in order to prepare poles for attachments. Electric cooperatives report that incomplete or incorrect information requires numerous site trips by electric cooperative employees. One Virginia electric cooperative reports that it receives very few requests for pole attachments, commenting that current agreements provide few incentives for cable operators to do so. This has resulted in numerous instances of

unauthorized attachments to electric cooperative utility poles, thus exacerbating the safety problems discussed above because the electric cooperative is not involved in the installation of the initial attachment.

The significant numbers of unauthorized attachments reported by numerous VMDAEC members create problems that affect electric cooperative reliability. One Virginia electric cooperative reports that it has received only seven requests for new attachments in the past five years, and it currently has approximately 11,200 attachments to its poles. Another Virginia electric cooperative reports that a survey several years ago revealed that one telecommunications provider made 98 unauthorized attachments out of the 143 completed that year. Some cable providers report to electric cooperatives in Virginia, Maryland and Delaware that they do not notify the utility pole owner of new attachments because of the need to connect customers quickly. Other cable operators mention to electric cooperatives that they are unaware that they need permission to attach to a utility pole because “it is just a service drop.”

For these reasons, VMDAEC supports the NRECA’s agreement with the NPRM’s proposals that “seek to address some of the legitimate concerns of utilities regarding electric system safety and reliability,” including imposition of penalties for unauthorized attachments and establishing a “comprehensive timeline for the attachment process.”⁷

3. *Electric cooperatives should not bear the burden of “certifying” the credentials of outside contractors.*

VMDAEC supports the NRECA Comments that criticize the NPRM’s proposal to require utilities to assume the entire burden of “certifying” the credentials of outside contractors and

⁷ NRECA Comments at p. 5.

publishing a list of “approved and certified contractors that the utility itself uses.”⁸ Such a burden exposes electric cooperatives to inordinate liability exposure, and electric cooperatives are not able to certify the abilities of contractors who deploy *telecommunications and cable* equipment.

Nonetheless, there are numerous problems with contractors providing pole attachment services to cable operators. Generally, electric cooperatives in Virginia, Maryland and Delaware report that contractors do not follow the attachment installation guidelines to which cable operators agree prior to installation. VMDAEC members observe that contractors generally do not comply with the National Electric Safety Code (“NESC”), and a number of electric cooperatives report that cable contractors are not familiar with the NESC. VMDAEC members report that cable attaching contractors frequently attach their guy wires to the appropriate utility poles and coil the guy wire up to the pole and not installing anchors. These guy wires remain in these positions until discovered by cooperative employees, and the electric cooperatives attribute this problem to improper supervision of contractors by cable companies.

In order to help solve these problems, VMDAEC supports the NRECA’s suggestion that the Commission consider “explicitly authorizing utilities to conduct a post-deployment, final acceptance inspection of the attachments to ensure compliance with the initial plans and all appropriate safety, reliability, and sound engineering practices, and to assess penalties against attachers for non-compliant work.”⁹ This proposal will help to alleviate the numerous problems VMDAEC members have had with cable operator contractors performing work on utility poles.

⁸ *NRECA Comments* at p. 11.

⁹ *NRECA Comments* at p. 13.

4. Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas.

VMDAEC supports NRECA's conclusion that low pole attachment rates do not result in more attachments that will provide advanced services in rural and sparsely populated areas.¹⁰ Regardless of the rates charged for pole attachments, electric cooperatives in Virginia, Maryland and Delaware report that broadband deployment in rural service territories is almost nonexistent. Even in situations where electric cooperatives charge relatively low rates for pole attachments (\$3.00-5.00 per pole per year), telecommunications and cable operators are not providing widespread broadband services to electric cooperative members. It is not surprising, therefore, that NRECA concludes that because the lowest pole attachment rates are charged by electric cooperatives located in the most sparsely populated areas, low pole attachment rates are not low enough to achieve universal broadband deployment.¹¹ As a result, electric cooperatives in Virginia, Maryland and Delaware are taking it upon their own to independently explore providing broadband services to their members.

It is clear that low population density is the most significant barrier to rural broadband deployment, and lower pole attachment rates will not significantly increase this deployment. In discussions with cable operators, VMDAEC members report that it is the cable operator's cost of providing service, notwithstanding the cost of pole attachments, which most directly affects whether electric cooperative members are provided access to broadband. Several Virginia electric cooperatives report that cable operators in their service territories indicate that they create a "threshold" investment that can be made in order to serve a particular group of members, and it

¹⁰ *NRECA Comments* at p. 25.

¹¹ *NRECA Comments* at p. 27.

is clear that the cost of pole attachments is only one (and a very minor) factor in that calculation. Rather, these electric cooperatives have found that cable operators propose to pass on so much of the “make ready” cost of providing broadband services that the service becomes too expensive for potential broadband customers.

Another Virginia electric cooperative, which has built and operates its own private fiber optic internal communications network to ensure a secure and reliable system, reports that it invited a cable television/internet service provider, in a one-time special arrangement, to use some of the cooperative’s excess fiber, at no cost, to help bring broadband internet to a business member of the cooperative that desperately needed the service and requested assistance from the cooperative. The cable provider declined to offer broadband service, indicating that pole attachment costs are, at best, a minor consideration in the decision-making process about broadband expansion. Therefore, because there are other more important factors used by cable operators to deploy broadband in rural areas, decreases in the cost of pole attachments will have little or no effect on the availability of broadband to rural communities.

5. *In order to continue to provide safe and reliable electric services to its members, Virginia, Maryland and Delaware electric cooperatives must recover their costs related to their utility poles.*

As mentioned in the NRECA Comments, very few electric cooperatives report using the Commission rates formulas to determine pole attachment rates.¹² This is also the experience of electric cooperatives in Virginia, Maryland and Delaware, where virtually none of the VMDAEC members report using the Commission rates formula in negotiating pole attachment rates. The reason for rejection of the existing formulas is that the formulas do not allow electric

¹² NRECA Comments at pp. 29-30.

cooperatives to recover their cost of ownership and maintenance of utility poles. The NPRM proposes to modify those formulas to shift even more costs to pole owners.

As detailed by the NRECA Comments, the focus of the NPRM is on lowering the cost of attachments to cable operators without taking into consideration the cost to utilities of maintaining utility poles.¹³ Electric cooperatives in Virginia, Maryland and Delaware have negotiated pole attachment agreements with attachers after determining the cost of providing space on their poles. The NPRM proposed formulas do not take into account the cost of building and maintaining utility poles.

Ultimately the NPRM rates fail to permit electric cooperatives to operate “at cost.” That is, the NPRM rates will not allow Virginia, Maryland and Delaware electric cooperatives to follow Internal Revenue Service cooperative principles and maintain their tax exemptions, resulting in higher rates charged to electric cooperative members. Electric cooperatives must be allowed to equitably allocate costs incurred in providing electricity to their members. Otherwise, if electric cooperatives are not allowed to recover the costs associated with providing pole attachments, then electric cooperative members must make up the difference. This would be an onerous result in any economy, but even more so given the stressed economic conditions in the rural areas served by electric cooperatives in Virginia, Maryland and Delaware.

6. While electric cooperatives are also interested in universal broadband, the NPRM’s pole attachment proposals do not provide appropriate solutions.

VMDAEC, NRECA and the Commission all share the common goal of improving the opportunities for consumers in rural areas to be provided broadband services. While the goal is well intended, the NPRM’s proposals will negatively impact the ability of Virginia, Maryland

¹³ NRECA Comments at p. 30.

and Delaware electric cooperatives to provide safe and reliable electric services to their members, which is the core responsibility of electric cooperatives. In order to fulfill this mission, it is vitally important that electric cooperatives maintain the viability and safety of its utility poles and recover their costs related to maintaining those utility poles. Consequently, VMDAEC urges the Commission to more fairly balance the goal of speedier broadband deployment with the need for electric cooperatives in Virginia, Maryland and Delaware to ensure the safety and reliability of their electric infrastructure and quality service to their members and adopt the recommendations set forth by NRECA in its comments.

Respectfully submitted,

By: _____

Eric M. Page, Esquire
LeClairRyan, a Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street, 8th Floor
Richmond, Virginia 23219
Tel (804) 968-2985
Fax (804) 783-7682
epage@leclairryan.com

Counsel for the Virginia, Maryland & Delaware Association of Electric Cooperatives

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